

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-5947**

**PETITION OF TERRY C. LODGE AND IDIL A. HARUN**

(Hearings held January 7 and March 3, 2004)

**OPINION OF THE BOARD**

(Effective date of Opinion, April 2, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(1). The existing single-family dwelling requires a variance of 1.40 feet as it is within 5.60 feet of the side lot line and the petitioners propose to construct a second-story addition that requires a variance of 1.40 feet as it is within 5.60 feet of the side lot line. The required setback is seven (7) feet.

The record of the public hearing on January 7, 2004, was left open to permit time for the petitioners to obtain a boundary survey. The original petition requested variances of 1.70 feet for both the existing single-family dwelling and the second-story addition. Upon receipt of the boundary survey, the variance request for both structures was reduced to 1.40 feet. See, Exhibit No. 15.

The subject property is Lot 15, Block K, Homewood Subdivision, located at 3104 Ferndale Street, Kensington, Maryland, 20895, in the R-60 Zone (Tax Account No. 01208826).

Decision of the Board: Requested variances **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct a second-story addition over the existing first-floor footprint.
2. The petitioners testified that their lot narrows from front to rear and that the existing single-family dwelling is located in the western side yard setback. The petitioners testified that their lot is narrower than the neighboring lots. See, Exhibit Nos. 9 [zoning vicinity map] and 14(f) [boundary survey].
3. The petitioners testified that the proposed addition will follow the footprint of the existing house and that the addition will not expand the existing footprint of the house.

## **FINDINGS OF THE BOARD**

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioners propose to construct a second-story addition over the existing first floor footprint. The proposed addition will not expand the existing footprint of the house. The existing dwelling is currently located in the western side yard setback and the petitioners' lot is narrower than the neighboring lot. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations will result in practical difficulties for the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the existing single-family dwelling and the construction of a second-story addition are the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that proposed construction will not materially impact the view from the neighboring properties and that the variances requested are de minimus. The Board further finds that the variances will not be detrimental to the use and enjoyment of the neighboring and adjoining property owners.

Accordingly, the requested variances of 1.40 feet from the required seven (7) foot side lot line setback for the existing single-family dwelling and of 1.40 feet from the required seven (7) foot side lot line setback for the construction of a second-story addition are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 7(a) through 7(e) and 14(a) through 14(f).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Donna L. Barron, Louise L. Mayer and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 2nd day of April, 2004.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.